IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.2392 OF 1996

Syndicate Bank a Body Corporate
Constituted under the Banking Companies
(Acquisition) & Transfer of Undertakings)
Act, 1970 having its Head Office ..Plaintiff
at Manipal, Karnataka State
and a Branch amongst others at
Kalbadevi, Bombay - 400 002

V/s.

Jitendra R. Karelia of Bombay Indian
Inhabitant carrying on business as a
Sole Proprietor of a firm in the name
and style of M/s.Bombay Enterprises ..Defendant
and residing at G-14, Shruthi Apartment,
Opp.Swati Bldg., Navgarh Road, Behind
Shivam Apartment, Bhayander (East)

Mr.A.Prabhu i/b.M/s.Dhruva & Co. for plaintiff

CORAM : A.S.OKA, J.

DATE : 11TH OCTOBER, 2007

ORAL JUDGMENT

1. The suit is listed under the caption "For want of Written Statement". Unconditional leave is granted in favour of defendant by order dated 9th April, 1999. However, Written Statement has not been filed by defendant.

2. According to the case of the plaintiff, the defendant was a holding current account with the plaintiff in the name of his proprietory firm M/s.Bombay Enterprises. It is alleged in the plaint that on 30th March, 1989 the current account was debited with a sum of Rs.30,000/- and Rs.10,000/- respectively. The credit was transferred at the request of the defendant to two other accounts by transferring the entries. After the debit, the balance in the current account ought to have been Rs.27,281/-. However, due to default in machine entry, balance of Rs.67,281/- which was shown before the amounts of Rs.30,000/- and 10,000/- were debited was carried forward to next page instead of carrying forward a sum of Rs.27,281/-. The said current account of the defendant was closed on 13th November, 1990. The mistake was detected on 25th August, 1992. The defendant was called upon to regularise the balance. According to the plaintiffs the amount of Rs.1,68,871/- is due and payable under the current

account by the defendant.

3. According to the case of the plaintiff, on the application made by the defendant, a Demand Loan was granted to the defendant to the extent of Rs.15,000/-. The loan was granted against execution of an agreement dated 5th January, 1991 by which the defendant agreed to repay the loan amount by instalements. A receipt in the sum of Rs.15,000/- was executed by the defendant on 5th January, 1991. By another letter of the same date, the defendant authorised the plaintiff to debit the monthly instalment of Rs.500/- in his Savings Bank Account. As the operation of the said loan account was irregular, the plaintiff issued notice dated 4th May, 1995 calling upon the defendant to repay the amount at the foot of the loan account. The claim of the sum of Rs.13,025/- in the suit is for recovery of amount due and payable at the foot of the said loan account.

4. The plaintiff has filed an affidavit of

Mr.Naik, Senior Branch Manager of Kalbadevi Branch, Mumbai of the plaintiff. The claim in the suit has been duly proved by the said affidavit. According to the case of the plaintiff, the original documents on which reliance has been placed have been misplaced. In the affidavit of Mr. Naik, it is stated that photocopies of the documents which are produced by the plaintiff have been taken from the original documents by mechanical process and the said photocopies were compared with the originals. As the claim in suit has been proved, plaintiff is entitled to a decree. The plaintiff has claimed further interest @ 22% p.a. with quarterly rests from the date of institution of the suit till realisation. Considering the facts and circumstances of the case, plaintiff will be entitled to further interest @ 10% p.a.

5. Hence, I pass following order.

(i) Suit is decreed in terms of prayer clause (a) subject to modification that further

interest payable on a sum of Rs.13,025/- will be @ 10% p.a. from the date of the institution of the suit till realisation or payment.

(ii) There will be a decree in terms of prayer clause (b) subject to modification that further interest will be payable on the sum of Rs.1,68,871/- @ 10% p.a. from the date of institution of the suit till realisation or payment.

(iii) Plaintiff will be entitled to recover costs of the suit from the defendant.

(iv) Plaintiff will be entitled to refund of Court fees, if any, as per the rules.

(v) Certified copy is expedited.

(**A.S.OKA, J.**)